

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TED A. PONTZ,

Plaintiff,

Case No. 1:07-cv-991

v.

Honorable Wendell A. Miles

MARY BERGHUIS et al.,

Defendants.

/

ORDER OF DISMISSAL

This is a civil action brought by a state prisoner pursuant to 22 U.S.C. § 611 *et seq.* (Foreign Agents and Propaganda), 4 U.S.C. §§ 101 & 102 (Flag and Seal, Seat of Government, and the States) and 28 U.S.C. § 1331 (Federal Question). Plaintiff paid \$5.00, which is the filing fee for a habeas corpus petition brought pursuant to 28 U.S.C. § 2254. Because Plaintiff did not bring his action pursuant to § 2254, he was subject to the \$350.00 filing fee for a civil action. Accordingly, the Court issued a deficiency order requiring Plaintiff to pay the balance of the \$350.00 filing fee or apply to proceed *in forma pauperis* within thirty days. Plaintiff timely applied to proceed *in forma pauperis*. On November 9, 2007, the Court issued an order granting Plaintiff leave to proceed *in forma pauperis* and requiring him to pay an initial partial filing fee of \$14.63 within thirty days.

Thirty days have passed and Plaintiff has not paid the initial partial filing fee. In addition, Plaintiff has filed a motion for voluntary dismissal of his case without prejudice (docket #5). In his motion, Plaintiff states that he does not have sufficient funds at this time to pay the initial partial filing fee and that he no longer wishes to pursue this action. According to the certified prisoner trust account statement submitted by Plaintiff on November 7, 2007, he had a current

spendable balance of \$50.66. Thus, Plaintiff had more than adequate funds at that time to pay the initial partial filing fee. Because Plaintiff failed to pay the initial partial filing fee within the time provided by the Court and no longer wishes to pursue this action, Plaintiff's motion for voluntary dismissal (docket #5) is GRANTED and this case is DISMISSED without prejudice. Plaintiff shall remain liable for the \$350.00 civil action filing fee.

IT IS SO ORDERED.

Dated: December 20, 2007

/s/ Wendell A. Miles
Wendell A. Miles
Senior United States District Judge